

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No.534 of 2000****For Approval and Signature:****HONOURABLE MR.JUSTICE J.M.PANCHAL****AND****HONOURABLE MR.JUSTICE H.B.ANTANI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment?
 - 2 To be referred to the Reporter or not?
 - 3 Whether Their Lordships wish to see the fair copy of the judgment?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
 - 5 Whether it is to be circulated to the Civil Judge?
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CHANDRAKANT ALIAS CHANDRO ALIAS JUTAL RAMABHAI VASAVA - Appellant**Versus****STATE OF GUJARAT - Respondent****Appearance :**

MRS NISHA M PARIKH for Appellant.

MR KT DAVE, APP for Respondent.

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL**and****HONOURABLE MR.JUSTICE H.B.ANTANI****Date : 27/01/2006****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)**

Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 ("the Code" for short), is directed against judgment dated May 3, 2000 rendered by the learned Additional Sessions Judge,

Vadodara, in Sessions Case No.161 of 1999 by which the appellant is convicted for commission of offences punishable under Sections 363, 366, 376 and 506(2) of the Indian Penal Code ("IPC" for short) and sentenced to suffer R.I. for one year for commission of offence punishable under Section 363 IPC as well as R.I. for seven years for commission of offence punishable under Section 366 IPC and R.I. for ten years for commission of offence punishable under Section 376 IPC as well as R.I. for three years for commission of offence punishable under Section 506(2) IPC. It may be stated that though it is mandatory for a Court to impose punishment of fine while convicting an accused for commission of offences punishable under Sections 363, 366 and 376 IPC, the learned Judge has not held the appellant liable to pay fine at all. The learned Judge has directed that the sentences imposed on the appellant shall run concurrently.

2. In view of decision in the case of **State of Punjab vs. Ram Dev, 2003 A.I.R. SCW 6947**, the name of the victim is not mentioned in this judgment.

3. The facts emerging from the record of the case

are as under:

The victim, at the time of incident, which took place on October 12, 1997, was residing near temple of *Dashma* situated in Village Rasulabad with her parents, brother and sisters. The school leaving certificate of the victim mentions her date of birth to be June 1, 1984 and that she has studied up to 4th Standard. Her father is doing business of selling bangles. On the day of incident, the victim went to house of Shantaben Patel at about 9.30 A.M. to bring buttermilk. She had carried a vessel, i.e. *tapeli*, to bring buttermilk. When she was returning home with the vessel containing buttermilk at about 10.30 A.M., the appellant, who was lying in wait for her near bushes of babul trees, caught her. The victim made her best efforts to free herself from the clutches of the appellant, but could not succeed. In that attempt, the vessel with buttermilk, which she was carrying, overturned and fell down on the ground, after which the appellant dragged her to a *tuver* field and threw the victim on the ground. The appellant, thereafter, lifted her petticoat and removed her nicker. The appellant also took off his pant and committed forcible rape on her. While rape was being committed, the victim was making attempts to free herself. Therefore, in

order to prevent her from shouting, the appellant gagged her mouth with a handkerchief as well as threatened her to kill if shouts were raised. After the rape was committed, the victim was experiencing acute pain in her vagina and almost fainted. Therefore, she was permitted to lie down at the spot up to 2.00 P.M. At about 2.00 P.M., the appellant took the victim to a secluded place situated near hedge and made her sit till 6.00 P.M. to 7.00 P.M. At about 7.00 P.M., the appellant took the victim to *dela* of one Vaniya situated in the sim of Village Amaratpura where his uncle was residing. At that time, the door of the *dela* was locked and no one was present at all. Therefore, the victim was made to sit near the door of *dela*. As the victim was totally exhausted, she had to lie down near the door. In the morning, when the victim got up, she did not find the appellant by her side and, therefore, escaped therefrom. She came to her house at about 9.00 A.M. and narrated the incident of rape on her to her parents. As is usual, she was looked down by her parents, who were not ready to help her. After about four days of the incident, it was decided to lodge the complaint, but as the parents of the victim were poor, they were apprehending fear from the appellant. Therefore, they approached Naginbhai

Viththalbhai Solanki, who was social worker of the village and Secretary of Vadodara District Rural Harijan Education Sangh. Mr.Solanki took the victim and her parents to the Office of the District Superintendent of Police, Vadoara (Rural). The District Superintendent of Police informed Vaghodiya Police and, therefore, the victim and her parents in the company of social worker Naginbhai went to Vaghodiya Police Station. As the parents of the victim were entertaining a doubt that the victim on her own had gone with the appellant, they instructed the Police to beat the victim and accordingly, the victim was beaten by the Police in presence of her parents. The complaint of the victim was got recorded by Police Sub Inspector of Vaghodiya Police Station. On the basis of the complaint of the victim, the offences punishable under Sections 363, 366, 376, IPC etc. were registered against the appellant. The victim was referred to Vaghodiya Primary Health Centre for examination where she was examined by Medical Officer Ms.Nehaben Desai. The clothes put on by the victim were seized under a panchnama and sent to Forensic Science Laboratory for analysis. The Investigating Officer recorded statement of those persons, who were found to be conversant with the facts of the case. It is relevant to notice that the

appellant absconded for a pretty long time and could be arrested only on March 19, 1999. At the time of arrest, panchnama of person of the appellant was drawn and his clothes were also seized. The samples of saliva, semen, etc. of the appellant were drawn and sent along with his clothes to Forensic Science Laboratory for analysis. On completion of the investigation, the appellant was chargesheeted in the Court of learned Judicial Magistrate First Class, Vadodara, for commission of offences punishable under Sections 363, 366, 376, 323, 342 & 506(2) IPC. As the offences punishable under Sections 366 and 376 IPC are exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Vadodara, for trial, on the basis of which, Sessions Case No.161 of 1999 was registered against the appellant.

4. The learned Additional Sessions Judge, Vadodara, to whom the case was made over for trial, framed necessary charge against the appellant at Exh.3. It was read over and explained to him. He pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined; (1) the victim as P.W.-1 at Exh.8; (2) mother of the victim, i.e. Kamlaben Dahyabhai Bajaniya as P.W.-2 at Exh.13; (3) Dr.Rajendra Amaratlal

Gajjar, who had examined the appellant, as P.W.-3 at Exh.14; (4) panch Vijaybhai Narmdashanker Bhatt as P.W.-4 at Exh.17; (5) panch Budhabhai Gopalbhai Rathodiya as P.W.-5 at Exh.19; (6) panch Manubhai Devjibhai Bhaliya as P.W.-6 at Exh.20; (7) Social Worker Naginbhai Viththaldas Solanki as P.W.-7 at Exh.22; (8) Medical Officer, who had examined the victim, i.e. Ms.Nehaben Chandrakant Desai as P.W.-8 at Exh.23; (9) panch Deepakkumar Natwarbhai Patel as P.W.-9 at Exh.31; (10) panch Bhavsingbhai Chhotabhai as P.W.-10 at Exh.33; (11) Principal of Primary School of Village Rasulabad where the victim had taken primary education up to 4th Standard, i.e. Ms. Hinaben Shanabhai as P.W.-11 at Exh.35; (12) Investigating Officer, i.e. PSI Mr. Mansukhlal Ramjilal Jeni as P.W.-12 at Exh.37; (13) Assistant Sub Inspector Mr.Vamjabhai Lallubhai as P.W.-13 at Exh.40; and, (14) Police Officer Mr.Naranbhai Someshwar Trivedi as P.W.-14 at Exh.41, to prove its case against the appellant. The prosecution also produced documentary evidence such as; complaint lodged by the victim at Exh.9; intimation sent by PSI, Vaghodiya Police Station, to Medical Officer to examine the appellant at Exh.15; report submitted by Medical Officer to PSI after examining the appellant at Exh.16; panchnama of place of incident at Exh.18; arrest panchnama of the appellant and

seizure of the clothes put on by him at Exh.21; intimation sent by PSI, Vaghodiya Police Station, to Medical Officer to examine the victim at Exh.24; report submitted by the Medical Officer after examining the victim at Exh.25; reports of analysis at Exh.28 to 30; panchnama of seizure of the clothes of the victim at Exh.32; school leaving certificate of the victim indicating that her date of birth was June 1, 1984 at Exh.36, etc. in support of its case against the appellant.

5. After recording of evidence of the prosecution witnesses was over, the learned Judge of the trial Court explained to the appellant the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement as required by Section 313 of the Code. In his further statement, the appellant claimed that he had enmity with the father of the victim over money disputes and, therefore, he was falsely implicated in the case. However, no defence evidence was led by him.

6. On appreciation of evidence adduced by the prosecution, the learned Judge held that in view of the

contents of school leaving certificate produced by the Principal of Primary School where the victim had studied up to 4th Standard, it was proved beyond reasonable doubt that on the date of the incident, the age of the victim was 13 years & 4 months. The learned Judge noticed that the incident of rape on her by the appellant was narrated by the victim in a natural manner without making any noticeable improvements and/or embellishments, and as defence was not able to impeach her credibility, the evidence tendered by her was worth accepting. After holding that corroboration is not a *sine qua non* for basing conviction under Section 376 IPC, the learned Judge held that the corroboration to the testimony of the victim was available in abundance in the form of her complaint as well as testimony of her mother. The learned Judge noticed that the victim, who was minor under 16 years of age, was taken by the appellant out of the keeping of her lawful guardian with an intent to force her to illicit intercourse and, therefore, the appellant was liable to be convicted for commission of offences punishable under Sections 363 and 366 IPC. The learned Judge noticed that before committing the rape and during the rape as well as thereafter, the victim was threatened with life and, therefore, the appellant was liable to be

convicted for commission of offences punishable under Section 506(2) IPC. According to the learned Judge, commission of offence punishable under Section 376 IPC was fully and satisfactorily established by the testimony of the victim and, therefore, the appellant was liable to be convicted for commission of offence punishable under Section 376 IPC. However, in view of the statement made by the victim that she was beaten by the Police at the instance of her parents, the learned Judge held that the commission of offence punishable under Section 323 IPC by the appellant was not established. The learned Judge considered the defence raised by the appellant that he was falsely implicated in the offences and came to the conclusion that the defence was not even remotely probabilized. In view of abovereferred conclusions, the learned Judge has convicted the appellant for commission of offences punishable under Sections 363, 366, 376 and 506(2) IPC and imposed the sentences referred to earlier by judgment dated May 3, 2000, giving rise to instant appeal.

7. This Court has heard Ms.Nisha M. Parikh, learned counsel of the appellant, and Mr.K.T.Dave, learned Additional Public Prosecutor for the State, at length and

in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

8. Before considering the arguments advanced at the Bar, it would be relevant to notice the principles of appreciation of evidence tendered by a victim of rape as laid down in **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat, A.I.R. 1983 SC 753**. While explaining that corroboration to the testimony of the victim of rape is not a *sine qua non* for recording conviction of an accused under Section 376 IPC, the Supreme Court has made following pertinent observations in paragraphs 7 to 11 of the reported decisions.

"7. It is now time to tackle the pivotal issue as regards the need for insisting on corroboration to the testimony of the prosecutrix in sex-offences. This Court, in **Rameshwar v. State of Rajasthan, (1952) 3 SCR 377 at p. 386 : (AIR 1952 SC 54 at p. 57)**, has declared that corroboration is not the *sine qua non* for a conviction in a rape case. The utterance of the Court in Rameshwar may be replayed, across the time-gap of three decades which have whistled past, in the inimitable voice of Vivian Bose, J. who spoke for the Court-

"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before

there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge, ...

The only rule of law is that this rule of prudence must be present to the mind of the Judge or the Jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

8. And whilst the sands were running out in the time-glass, the crime graph of offences against women in India has been scaling new peaks from day to day. That is why an elaborate rescanning of the jurisprudential sky through the lenses of 'logos' and 'ethos', has been necessitated.

9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the

Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical. It is conceivable in the western society that a female may level false accusation as regards sexual molestation against a male for several reasons such as :-

(1) The female may be a 'gold digger' and may well have an economic motive- to extract money by holding out the gun of prosecution or public exposure.

(2) She may be suffering from psychological neurosis and may see an escape from the neurotic prison by phantasizing or imagining a situation where she is desired, wanted, and chased by males.

(3) She may want to wreak vengeance on the male for real or imaginary wrongs. She may have a grudge against a particular male, or males in general, and may have the design to square the account.

(4) She may have been induced to do so in consideration of economic rewards, by a person interested in placing the accused in a compromising or embarrassing position, on account of personal or political vendetta.

(5) She may do so to gain notoriety or publicity or to appease her own ego or to satisfy her feeling of self-importance in the context of her inferiority complex.

(6) She may do so on account of jealousy.

(7) She may do so to win sympathy of others.

(8) She may do so upon being repulsed.

10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the

urban as also rural society. It is also by and large true in the context of the sophisticated not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because :- (1) A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred, (2) She would be conscious of the danger of being ostracized by the Society or being looked down by the society including by her own family members, relatives, friends, and neighbours, (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husbands' family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocent. (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as a deterrent.

11. In view of these factors the victims and their relatives are not too keen to bring the

culprit to books. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated. On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye-witness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the Court's in the western world (obeisance to which has perhaps become a habit presumably on account of the colonial hangover). We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities-factor' does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification : Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self preservation. Or when the 'probabilities-factor' is found to be out of tune."

In the light of aboveresferredto principles, the arguments advanced at the Bar will have to be considered by this Court.

9. The plea that the place of incident is situated near the fields as a result of which, the incident could

have been witnessed by others if, in fact, forcible rape was committed by the appellant on the victim and, therefore, the Court should come to the conclusion that the victim was a consenting party, has no substance. The victim has clearly stated that when she was returning home after taking buttermilk from the house of Shantaben Patel, she was caught hold of by the appellant, who was lying in wait for her near bushes of babul trees. The victim has stated that after catching hold of her, she was dragged by the appellant to a *tuver* field where she was thrown on the ground and, thereafter, raped. The victim has narrated in her testimony that she had to lie down on the spot roughly about up to 2.00 P.M. as she was suffering acute pain in vagina. According to the victim, she was thereafter taken to a secluded place near a hedge where she was made to sit up to 7.00 P.M. and thereafter, taken on foot to another village where uncle of the victim was staying. According to the victim, the appellant had forced her to lie down near the door of the house of the uncle of the appellant as the house was locked from the outside. Though the victim is subjected to gruelling cross-examination, nothing could be brought on record by the defence to impeach her credibility. It is relevant to notice that the defence of the appellant was that of total denial. It was not suggested to the

victim that she of her own free will had left the house of her parents to go with the appellant and permitted the appellant to have sexual intercourse with her by giving consent. Though no such suggestion was made to the victim by the defence, the argument was advanced before the trial Court that the victim had given consent after which the appellant had sexual intercourse with her. In absence of any evidence on record indicating that the victim had given any consent as pleaded by the learned counsel of the appellant, the said plea was rightly rejected by the learned Judge of the trial Court.

10. Even if one were to agree with the submission of the learned counsel of the appellant that the victim was a consenting party and had sexual intercourse with the appellant on her own free will, this Court is of the opinion that the offence punishable under Section 376 IPC is firmly established by the prosecution. The contents of the school leaving certificate produced and proved by the Principal of Primary School of Rasulabad, establish beyond reasonable doubt that the date of birth of the victim was June 1, 1984. The contention that in view of the testimony of the mother of the victim, the Court should come to the conclusion that the age of the victim was more than 16 years on the day of the incident, cannot

be accepted. If one reads the testimony of the mother of the victim, it becomes at once clear that she does not know her own birth date nor knows the date of her marriage nor has been able to state birth date of any of her six children. Therefore, on the basis of testimony of mother of the victim, it is difficult for the Court to come to a conclusion that the age of the victim was more than 16 years on the day of incident. As observed earlier, the contents of the school leaving certificate conclusively prove that birth date of the victim was June 1, 1984 and, therefore, on the day of incident, the victim was aged 13 years & 4 months. Clause 6^{thly} of Section 375 of the IPC provides that a man is said to commit rape, who has sexual intercourse with a woman with or without her consent when she is under 16 years of age. The testimony of the victim proves beyond shadow of doubt that the appellant had sexual intercourse with her. Therefore, clause 6^{thly} of Section 375 IPC would be applicable to the facts of the case. The medical evidence on record tendered by Dr.Nehaben read with the contents of examination report issued by her shows that vagina passage of the victim was narrow. Therefore, it is not possible for the Court to come to the conclusion that she was used to sexual intercourse. There is no manner of doubt that the appellant, who was an adult, had kidnapped

the victim and taken her with him, with an intent to have sexual intercourse with her and committed rape on her. The commission of offence as described by Section 375 IPC, which is punishable under Section 376 IPC, is clearly made out by the prosecution. The consent, if any, given by the victim is of no consequences and the conviction of the appellant under Section 376 IPC will have to be upheld. In view of the above discussion, well-founded conviction of the appellant for commission of offences punishable under Sections 363, 366, 376 and 506(2) IPC cannot be interfered with and it is hereby upheld.

11. The pertinent observations made by the Supreme Court in several reported decisions that in the tradition bound non-permissive society of India if a girl states any incident of rape on her, she is likely to be ostracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbours, proved right in instant case. Unfortunate victim has narrated that her parents suspected that she on her own had gone with the appellant and, therefore, her parents had instructed the police to beat her and accordingly she was beaten by the Police. This is nothing else, but sheer atrocity on the victim of

rape. When a little girl, who is raped, is not treated with sympathy by her parents, she is hardly likely to find solace elsewhere. The idea that the parents would get their daughter beaten at the hands of the police on suspicion that she was a consenting party to sexual intercourse would shudder any sensible judicial officer. Be that as it may, the fact remains that the close scrutiny of the testimony of the victim makes it more than evident that she has narrated the incident of rape on her in a simple manner without making any noticeable improvements and/or embellishments. In spite of her gruelling cross-examination, the cross-examiner could not bring on record any material to destroy her claim that she was subjected to forcible rape by the appellant. It is relevant to notice that immediately after making her escape good from the clutches of the victim, the victim had returned home and narrated the incident of rape on her to her parents. The mother of the victim is examined by the prosecution at Exh.13. The mother of the victim has fully corroborated the victim. The victim also stands corroborated by her complaint. On the facts and in the circumstances of the case, the defence has failed to probabilize its case that the victim was a consenting party to sexual intercourse and, therefore, the appellant is not entitled to acquittal.

12. The plea that there is delay of about four days in lodging the complaint and, therefore, the prosecution case should be disbelieved is devoid of merits. It is relevant to notice that witness Naginbhai Solanki, whose testimony is recorded at Exh.22, has stated that the parents of the victim in the company of the victim had met him and were looking frightened. The testimony of the witness Mr.Solanki would further show that he had asked the parents of the victim not to have fear from anyone and taken them before the District Superintendent of Police and then to the Police Station as a result of which, the complaint could be lodged by the victim. The incident in question had taken place in the small village and was likely to embarrass the reputation of the victim as well as her parents. Therefore, initial hesitation coupled with fear is understandable in lodging the complaint. It is relevant to notice that in his further statement, it was claimed by the appellant that there was enmity between him and father of the victim over money dispute and, therefore, he was falsely implicated in the case whereas while addressing the Court on the question of sentence to be imposed on him, the appellant had stated before the learned Judge that he was falsely implicated in the case

by Sarpanch in order to get his house demolished. This is quite evident if one refers to paragraph 16 of the impugned judgment. The appellant could not specify before the Court as to what were money transactions between him and father of the victim, which resulted into the dispute and ultimately prompted the father of the victim to lodge a false complaint of rape on his daughter by the appellant nor the appellant could produce any document on record to show that any action was taken by Sarpanch to get his house demolished nor any material could be produced on record of the case that the Sarpanch was on inimical terms with the appellant. As false implication of the appellant in such a serious case stands completely ruled out, delay in lodging the complaint, which is satisfactorily explained by the prosecution, cannot be treated as having vitiating effect on the prosecution case.

13. One of the contentions, which was raised by the learned counsel of the appellant, was that Dr.Neha, who had examined the victim after lodging of the complaint, has not supported the victim regarding injuries sustained by her and, therefore, the prosecution case should be disbelieved. This argument cannot be accepted because Dr.Neha in her testimony before the Court has, in terms,

stated that when she had examined the victim, the victim was complaining of pain on her finger, legs, etc. It is relevant to notice that the victim was examined by the doctor after about four days of the incident and naturally, therefore, there would not be any evidence indicating the existence of simple injuries. This, however, cannot be construed to mean that the victim is not supported by the medical evidence on record. As observed earlier, the corroboration is not a *sine qua non* for basing the conviction in a rape case if the incident narrated by the victim inspires confidence of the Court. On re-examining the testimony of the victim, this Court finds that the testimony of the victim inspires confidence of this Court and, therefore, the plea raised by the learned counsel of the appellant cannot be accepted.

14. So also, the contention that the discrepancy that the complaint was got dictated by the father of the victim and not by the victim herself or that she could not have signed the complaint as she was an illiterate and, therefore, the appeal should be accepted, is merely stated to be rejected. The record of the case shows that the victim had studied up to 4th Standard and naturally was, therefore, capable of signing a document. Signature

put by her on her complaint would not indicate that the complaint was fabricated. It is true that in her cross-examination, the victim has stated that the complaint was narrated by her father, which was reduced into writing and subsequently signed by her. However, it is well to remember that she was not in a fit state of mind to dictate the complaint. Before the complaint was reduced into writing, she was beaten by the Police at the instance of her parents. Under such circumstances, it is but natural that father would dictate the complaint to the Police Officer, which was ultimately signed by the victim. Dictation of the complaint by father would not show that no incident of rape on the victim had taken place or that a false case was foisted upon the appellant. The learned Judge of the trial Court, who had advantage of observing demeanour of the witnesses, was justified in acting upon reliable testimony of the victim and convicting the appellant for commission of offences punishable under Sections 363, 366 and 376 IPC.

15. The plea that punishment imposed on the appellant be reduced to the minimum prescribed under Section 376 IPC in view of mitigating circumstances pointed out by the appellant before the trial Court when he was heard on the question of sentence, has no force.

Reading of the evidence of the victim shows that the appellant has ruined her life. The defence that he was innocent, but was implicated in the case because of enmity between him and father of the victim or because of the enmity between him and social worker Mr.Solanki, could not be even remotely probabilized. Taking up a false defence in such a serious case cannot be ignored by the Court while considering the question whether a case is made out for reduction of sentence. During the course of hearing of the appeal, the learned Additional Public Prosecutor has produced Jail Remarks Sheet of the appellant for perusal of the Court. It indicates that the appellant was granted furlough leave by the Jail Authorities for fourteen days vide order dated June 14, 2002 and he was supposed to surrender to the Jail Authorities after fourteen days, but he is absconding since June 2002, for which a complaint has been lodged against him in the competent Court. The remarks sheet makes it very clear that the appellant has no respect whatsoever to the orders passed by the competent authorities. By absconding, the appellant has virtually rendered judgment of the trial Court nugatory. This also indicates that he is a headstrong person and can hardly be controlled by the Jail Authorities or by Police Authorities or by Courts. The record further shows that

after commission of crime, the appellant was absconding for a period of two years and could be arrested after only he was declared as absconder by the competent Court. Such a person does not deserve any sympathy in the matter of imposition of sentence and must be ruthlessly dealt with. On the facts and in the circumstances of the case, this Court is of the opinion that no ground is made out by the learned counsel of the appellant to reduce the sentence imposed on the appellant to the minimum prescribed under Section 376 IPC. Thus, the sentences imposed on the appellant by the trial Court also deserve to be upheld.

Above discussion makes it evident that there is no substance in the appeal and, therefore, the same will have to be dismissed.

16. The record shows that the trial in this case was not conducted *in-camera* as required by Section 327(2) of the Code and explained by the Supreme Court in paragraph 23 of the reported decision in **State of Punjab vs. Gurmit Singh, A.I.R. 1996 SC 1393**. In the said decision, the Supreme Court has further, *inter alia*, held that "*the Courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further*

embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout". This dictum of the Supreme Court is also ignored by the learned Judge of the trial Court by referring the name of the victim in the impugned judgment. As observed earlier, the learned Judge has not imposed punishment of fine on the appellant for commission of offences punishable under Sections 363, 366, 376 IPC though it is mandatory to do so. In absence of an enhancement appeal, this Court does not find it proper to exercise *suo motu* powers for enhancement of sentence at this distance of time.

17. The Registrar is hereby directed to bring the lapses noted above to the notice of the learned Judge of the trial Court so that in future such mistakes are not committed and/or repeated by him again.

For the foregoing reasons, the appeal fails, and is dismissed. Muddamal be disposed of in terms of the directions given by the learned Judge in the judgment impugned in the appeal.

[J.M.PANCHAL, J.]

[H.B.ANTANI, J.]

Rajendra